



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

effect the full development of mind, through the sense of sight, as through the other senses; and no way appears more likely to accomplish this than by making drawing a branch of study in our schools. Educate the eye—for in addition to the various practical advantages arising therefrom, such a one, in the language of Addison, “is let into a great many pleasures that the vulgar are not capable of receiving. He can converse with a picture, and find an agreeable companion in a statue. He meets with a secret refreshment in a description, and often feels a greater satisfaction in the prospect of fields and meadows than another does in the possession. It gives him, indeed, a kind of property in everything he sees, and makes the most rude, uncultivated parts of nature administer to his pleasures: so that he looks upon the world as it were in another light, and discovers in it a multitude of charms that conceal themselves from the generality of mankind.”

#### THE MOSS ROSE.

THE angel who sprinkles the dew on the flowers,  
Fell asleep on a beautiful morning in June,  
'Neath the shade of a rose tree so fragrant and cool;  
And his sleep was so quiet he slept until noon.

Awaking, he said, “O thou beautiful thing!  
I know not thy name, but no flower in our heaven  
Has an odor more sweet; and whate'er thou wilt ask  
I will give, in return for the joy thou hast given.”

“With a new grace adorn me!” the blushing rose said,  
And her petals shook perfume around her in showers;  
When, lo! without lessening her beauty of form,  
He clothed with soft moss the bright queen of the flowers.

So, charity, loveliest gift from on high,  
Like the vesture of moss which the angel threw o'er,  
Adds a charm to the lips, and the brow, and the eye,  
Of my loved one when light'ning the load of the poor.  
B.

EVERY national or social preference or prejudice is perpetually striving to divert particular words from the service of universal truth, and to make them subserve its private purposes; thus such words as “liberal” and “conservative” become terms of reproach, each of them signifying, to the vulgar, ignorant, and violent of the opposite party, everything that is bad and contemptible. The first confusion of language was owing to resistance to the Deity: a second Babel is produced by the mutual enmities of mankind. There is probably not a language in Europe which has not been positively damaged by the distortions and perversions left on it by party spirit.  
*Boyes.*

#### ANCIENT LAW.\*

THERE is no branch of knowledge that has a more serious bearing on the material interests of society than law; there is none in a more imperfect condition, or more remote from general comprehension, owing to the crude state of the language in which it is expressed. Its proprietary bearing has rendered it not only unwisely conservative, but injuriously retrogressive, and has rendered it unable to carry forward the thread of its historical growth. If theology presses upon the jeopardy of our souls in the world to come, law presses not less potently upon the jeopardy of our pocket interests in this world. Both have had an incalculable influence upon the fears, apprehensions and superstitions of the greater portion of mankind, and both have been equally powerful in checking the natural progress of our social institutions. We do not deny their past utility, their timely agency in adjusting the conflicting relationships of men, but their repugnance to change has often rendered them injurious to our moral and civil advancement. If man and all his institutions are progressive, if they are mutable by time, it is folly to look upon any civilizing instrument as immutable or more than provisional.

Though law is the idol of democratic nations, it has less influence on the actions of their inhabitants than one might imagine. The desire of every man to be a self-constituted judge of what is right without any natural or cultivated qualification to be so, the contempt for authority, however well and wisely established, and the general prevalence of anarchy of thought, render law little less than a farce—than a thing to shift and vary to suit individual interests. In its radical constitution, law is vitiated by political agencies in a Democracy. If we look at the legislative law-making power, we shall find it partake of that feebleness and inefficiency inseparable from universal suffrage—inseparable from that huge political conglomerate of bodies without heads so worshipped by the numerically cracked populations of the day. Of the innumerable law-manufacturers elected by our people, how many are sufficiently conversant with past legislation to comprehend the necessity of a present change or modification, or what the nature of it should be? Yet we know that all real reforms in law grow out of the roots of past legislation and are but the continued and developed shoots of it. How

\* Ancient Law: its connection with the early history of society, and its relation to modern ideas, by Henry Sumner Maine, London, 1861.

many of our law-makers are sufficiently masters of their own language to render a legislative enactment intelligible according to the rules of grammar or the laws of logic. As the majority of the represented are, so may the representatives be regarded; there is generally an instinctive affinity between them, an amalgamation working things out to the same bad end. If the natural evils of society did not submerge the multiplied growth of modern legislation, we should soon be reduced to a complicated state of legalized barbarism. To make laws beneficial to society, demands an immense amount of both natural and acquired ability. It is not sufficient to have lived so many years in a broker's office or that of a lawyer, to have made several stump speeches, or to be even an adept in political wire-pulling. Long and painful study is one indispensable requisite, something, however, to which our smart democrats never yield themselves. There is no country where the legal machinery is turned into such a weathercock as in this. The general interest is lost sight of in the conflict of interested, selfish, and enfeebled individualities; no principle is discernible through the thick mist of petty ambitions, petty personal designs and schemes. Passion, caprice, avariciousness and their cognate vices, seek to erect themselves into statutory law, to be enforced by its ponderous engines.

Law might easily be divided into three states or stages—the progressive, the conservative and the destructive. In newly forming communities and amongst fresh, vigorous and morally disposed races we find the first. Law in this stage moves abreast and constructively with the social system with which it is happily affiliated, and to which it acts as a useful help in its onward course. In the second it but watches over and protects the good it has done, guards the stability of the social fabric and unites its varied parts into one harmonious whole. In the third it has lost its vitality, begins to relax and clog the wheels of society and to place irritating barriers in the way of all future advancement. Its official and professional interpreters become mystified and are at war with each other; confusion and darkness penetrate all, until finally the administrators of the law become so greedy and corrupt as to call society out in vindication of itself. This is the beginning of a new order of things, or at any rate an attempt to check further depravity, by fresh legislation, reforms in the judiciary, and a more careful watch on the movements of the members of the bar. We here see the radical difference between man as a continuously growing and improving power, and the

temporary and provisional nature of the instrumentalities which act as his auxiliaries in time and place and which grow out of the workings of his own faculties. The cause (man) is as immortal as the effect (his institution) is mortal. A great truth was enunciated when Montesquieu set forth the importance of having institutions accord with the moral temperaments of people: it set aside the absurdity of having all legislation alike, apart from the conditions of race, climate and manners. This love of mechanical uniformity on the part of jurists has been a curse wherever it has had a chance to work. Every individual, in order to be fully able to develop himself, must be in perfect harmony with the condition of his existence, with his environment. It is equally true of a country and its inhabitants. The decline of both individuals and races is due to causes of this class which are open to scientific application whenever the mist of political oratory is cleared away sufficiently to make way for its comprehension. In all present and wise legislation, community of laws and similitude of administrative action must be looked for in a very remote future. The cobweb like nature, and the obscurity of all legislative, judicial and administrative expression show but little signs at present that our laws will undergo any radical improvement other than that forced upon them by the grinding necessities of social changes. We can scarcely hope to see law attain to the dignity of a science to any greater extent than it has done so in the past, the other sciences having a constant tendency to render it useless in the interpretation of all social phenomena. Its disciples continue to lose character in all the higher attainments of the profession, and assume more and more a commercial ambition. The mechanical untying of mere legal knots consequent upon the conflict of industrial and commercial interests, is no part of a science, and appeals to none of the higher faculties of our nature. And yet it is to this that Law is nearly reduced. Its petty attempts to bind down everything to precedent is a mere Chinese juggle, and is futile as well as baneful when applied to the movements of a progressive race. The kernel of every great social question is as clearly comprehended by the layman as the professional lawyer, but in the complicated network of Law-court procedure the lawyer is master, owing to constant familiarity with its technicalities. To analyze this procedure, however, would be to unfold its barbarism, and fiendish checks upon the growth of society.

The volume before us by Professor Maine is a very valuable contribution to the study of Law.

Its chief object is to indicate some of the earliest ideas of mankind, as they are reflected in Ancient Law, and to point out the relation of those ideas to modern thought. The volume is divided into ten chapters under the following heads: Ancient Codes—Legal Fictions—Law of Nature and Equity—The Modern History of the Law of Nature—Primitive Society and the Ancient Law—The Early History of Testamentary Succession—Ancient and Modern Ideas respecting Wills and Successions—The early History of Property—The early History of Contract—The early History of Delict and Crime.

The subject of each chapter is treated with great ability, showing the author to be a man of extensive culture, ripe judgment and master of a fresh and vigorous style. To show the nature and bearing of the work, we shall give some extracts. Our author says that the stationary condition of the human race is the rule, the progressive the exception. Of progressive societies he says:

With respect to them it may be laid down that social necessities and social opinion are always more or less in advance of Law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to reopen. Law is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed.

In the infancy of society the progress of the greater part of mankind was prevented or arrested by the dominancy of Theology in civil affairs. Our author says:

The rigidity of primitive law, arising chiefly from its early association and identification with religion, has chained down the mass of the human race to those views of life, and conduct, which they entertained at the time when their usages were first consolidated into a systematic form. There were one or two races exempted by a marvellous fate from the calamity, and grafts from these stocks have fertilized a few modern societies, but it is still true that, over the larger part of the world, the perfection of law has always been considered as consisting in adherence to the ground plan supposed to have been marked out by the original legislator. If intellect has in such cases been exercised on jurisprudence, it has uniformly prided itself on the subtle perversity of the conclusions it could build on ancient texts, without discoverable departure from their literal tenor. I know no reason why the law of the Romans should be superior to the laws of the Hindoos, unless the theory of Natural Law had given it a type of excellence different from the usual one. In this one exceptional instance, simplicity and symmetry, were kept before the eyes of a society whose influence on mankind was destined to be prodigious from other causes, as the characteristics of an ideal and absolutely

perfect law. It is impossible to overrate the importance to a nation or profession of having a distinct object to aim at in the pursuit of improvement. The secret of Bentham's immense influence in England during the past thirty years is his success in placing such an object before the country. He gave us a clear rule of reform. English lawyers of the last century were probably too acute to be blinded by the paradoxical commonplace that English law was the perfection of human reason, but they acted as if they believed it for want of any other principle to proceed upon. Bentham made the good of the community take precedence of every other object, and thus gave escape to a current which had long been trying to find its way outward.

To the assumption, says our author, of a Law Natural, we owe the doctrine of the fundamental equality of human beings. That all men are equal is one of a large number of legal propositions which, in progress of time, have become political. The Roman jurisconsults of the Antonine era lay down that *omnes homines naturâ æquales sunt*.

This equality of men was languidly assented to and suffered to have little influence on opinion and practice until it passed out of the possession of the lawyers into that of the literary men of the eighteenth century and of the public which sat at their feet. With them it became the most distinct tenet of their creed, and was even regarded as a summary of all the others. It is probable, however, that the power which it ultimately acquired over the events of 1789 was not entirely owing to its popularity in France, for in the middle of the century it passed over to America. The American lawyers of the time, and particularly those of Virginia, appear to have possessed a stock of knowledge which differed chiefly from that of their English contemporaries in including much which could only have been derived from the legal literature of continental Europe. A very few glances at the writings of Jefferson will show how strongly his mind was affected by the semi-judicial, semi-popular opinions which were fashionable in France, and we cannot doubt that it was sympathy with the peculiar ideas of the French jurists which led him and the other colonial lawyers who guided the course of events in America, to join the specially French assumption that "all men are born equal," with the assumption, more familiar to Englishmen, that "all men are born free," in the very first lines of their Declaration of Independence. The passage was one of great importance to the history of the doctrine before us. The American lawyers, in thus prominently and emphatically affirming the fundamental equality of human beings, gave an impulse to political movements in their own country, and in a less degree in Great Britain, which is far from having yet spent itself; but besides this they returned the dogma they had adopted to its home in France, endowed with vastly greater energy and enjoying much greater claims on general reception and respect. Even the more cautious politicians of the first Constituent Assembly repeated Ulpian's proposition as if it at once commended itself

to the instincts and intuitions of mankind; and of all the "principles of 1789" it is the one which has been least strenuously assailed, which has most thoroughly leavened modern opinion, and which promises to modify most deeply the constitution of societies and the politics of states.

The Roman Testamentary Law is well known to be superior to our own; it sought to uphold the material and moral integrity of the Family and to shut out the abuses of individual capriciousness in the composition of wills.

It is remarkable, says our author, that a will never seems to have been regarded by the Romans as a means of *disinheriting* a Family, or of effecting the unequal distribution of a patrimony. The rules of law preventing its being turned to such a purpose, increase in number and stringency as the jurisprudence unfolds itself; and these rules correspond doubtless with the abiding sentiment of Roman society, as distinguished from occasional variations of feeling in individuals. It would rather seem, as if the Testamentary Power were chiefly valued for the assistance it gave in *making provision* for a Family, and in dividing the inheritance more evenly and fairly than the Law of Intestate Succession would have divided it.

Mr. Maine's clear insight into Roman civilization enables him to comprehend its true reflection in modern communities. The following extract will show his superiority to other writers in his historical conceptions.

It is often said that the irregular and various contour of modern civilization is due to the exuberant and erratic genius of the Germanic races, and it is often contrasted with the dull routine of the Roman Empire. The truth is that the empire bequeathed to modern society the legal conception to which all this irregularity is attributable; if the customs and institutions of barbarians have one characteristic more striking than another, it is their extreme uniformity.

AFTER the stage of civilization has arrived, in which the simple and childlike amusements of primitive times have ceased to amuse, where are we to look for the antidote to the strong animal excitement to which man, in disdain of humbler pleasures, resorts. In universal ascetism? The vanity of this dream has a thousand times been proved; and the humane and the wise will recognize that the beneficent Creator, who gave to man quick senses wherewith to drink in the varied beauties of his works, and enlinked them in mysterious connection with the imagination and the heart, has pointed out to us with a finger of light the moral uses of art, and the moral vocation of those of his servants whom he has endowed with the power of speaking to men the echo of the language in which He speaks to them in the beauty and the harmony of his creation.—*Brit. and For. Rev.*

## DONÑA AGNES.

### A ROMANCE WITHOUT FICTION.

BY MRS. E. VALE SMITH.

#### CHAPTER IV.

#### CHIARO-OSCURO.

"Looked she red, or pale; or sad, or merrily?  
What observation mad'st thou in this case,  
Of the heart's meteors tilting in the face."

COM. OF ERRORS.

For a few weeks all went on smoothly and pleasantly; Don Fuas freely proffered his hospitality to his old protégé, of whose success and rising fame he considered himself the founder, and on which he had reason to pride himself for his discrimination and prescience. Doña Isabella liked to have him at her table, the formality of which was so agreeably relieved by young Vieira's conversational brilliancy, and made cheerful by the readiness of his wit. Gonzalo paid little heed to him, beyond extending the ordinary courtesies of the time and place, which a Portuguese fidalgo never forgets, and as rarely neglects, unless with the direct and definite intention of drawing on a quarrel, and for this at present he had no motive. It is true he still regarded Francisco with instinctive repulsion, but he had no plausible pretext for exhibiting it, and therefore respected himself sufficiently to repress it; moreover, they rarely met, Gonzalo's pleasures keeping him much from home, and Francisco naturally preferring to avail himself of those hours for visiting the family, when his old enemy was absent.

Father Estevan listened with charmed and never wearied ears, to the narration of all those wonderful things, which the young traveller had seen in Rome, and which he good-naturedly described over and over again, for the reverend father's edification and delight. In this simple priest's eyes, a person fresh from the precincts of the Vatican, was an object to be admired and envied: his frequent questions, and his anxiety to have the details of every incident connected with Francisco's sojourn in the Imperial City, gave the youth frequent opportunities of narrating adventures in which the element of personal peril was sometimes present—especially when describing his excursions, or sketching tours, as he called them, into the neighboring villages and more distant hills, in which it was hard to tell whether beggars or banditti were the prevailing features; while his familiarity with saintly shrines and noted churches, and especially with the interminable details of St. Peter's, secured him a reputation for uncommon sanctity for one so